ably true that legal damages would be inadequate or conjectural. Professor Langdell suggests a further exception in the case of unilateral contracts containing a negative covenant of which it is said equity will take jurisdiction simply because the covenant is negative. 1 Harvard Law Rev. 383. But it does not appear that the courts have applied that principle to any case where the legal remedy was clearly adequate. The principal case at all events does not fall within either of these two possible exceptions and advances no argument sufficient to justify its attempt to establish a new one.

CITIZENSHIP OF CORPORATION INCORPORATED IN DIFFERENT STATES. —Where the same company is incorporated in several States it frequently becomes necessary to determine the relation between the legal entities thereby createdin order to determine the rights of third parties to sue it in the federal courts. If a railroad incorporated in States A and B, commits a tort in State A, can an injured citizen of State A sue the road in the federal courts of either State alleging it to be a corporation of B? It is well settled that in such a case separate corporations are created in A and B even though the railroad is "spoken of in the laws of the two States as one corporate body." *Ohio & Mississippi R. R.* v. *Wheeler* (1861) 1 Black (U. S.) 286. Each corporation is a citizen of its State for the purposes of federal jurisdiction. *Memphis and Charleston R. R.* v. *Alabama* (1882) 107 U. S. 581. But the question remains open as to how far each of these entities enter into the acts of the railroad in each State. A recent case holds that as to all acts done within State A corporation A alone is acting, that corporation B having no part in them cannot be sued in the federal courts by a citizen of A for a tort there committed. *Goodwin* v. *N. Y., N. H. & H. R. R.* (C. C. Mass 1903) 124 Fed. 358. This holding finds some apparent support in the decision in *Baldwin* v. *Chicago & N.* W. R. R. (C. C. W. D. Mich. 1898) 86 Fed. 167, and in dicta in *Ohio R. R.* v. *Wheeler*, supra. On a similar state of facts, however, the opposite result was reached in *Stephens* v. *St. Louis & S. F. R. R.* (C. C. Ark. 1891) 47 Fed. 530. Further in several cases where a company was incorporated in both A and B the federal courts have taken jurisdiction on the ground of diversity of citizenship where B corporation was suing a citizen of A without regard to whether the acts of the company out of which the right of action arose were done in A or B. *St. Louis R. R.* v. *I. & St. L. R. R.* (C. C. Ind. 1879) 9 Biss. 144; *Louisville Trust Co.* v. *Louisville N. A. & C. R. R.* (C. C. A. Sixth Circ. 1896) 75 Fed. 433; *Nashua & Lowell R. R.* v. *Boston & Lowell R. R.* (1889) 136 U. S. 356.

The rule suggested in the principal case seems artificial. There seems to be nothing in the way that the business of the consolidated company is actually carried on to warrant saying that in State A corporation B is taking no part in the acts of the company and that in State B corporation A is taking no part though the acts may

be done by the same agents, under the same orders and as part of the same business transaction. If the agents of the company committed a tort in State C would not the two entities be held jointly and severally liable? What is the difference in the nature of the act where the tort is committed in State A or B? The company makes its contracts and operates its road as a single business. It would be contrary to legal principle to say that there are not two distinct legal entities; it would be contrary to common experience to say that these entities do not perform every act of corporate life jointly. The consolidated company incorporated in several states would seem to be a business entity not unlike a partnership. The same result should follow the torts of the company as those of a partnership; not because the company is in fact a partnership but because in contemplation of law they are both single joint undertakings, one of corporations the other of individuals. In the case of a tort in State B, then, the entities would be jointly and severally liable and corporation A could be sued in the federal courts of either State by a citizen of State B. By parity of reasoning contracts made by the company would ordinarily give the two entities joint rights and liabilities and this was suggested in *St. Louis R. R.* v. *I. & St. L. R. R.*, supra. In an action on a contract by a citizen of State A or State B the two corporations would, then, on strict theory have to be joined and there would be no diversity of citizenship on which to ground federal jurisdiction; and so if they joined as plaintiffs.

ACTION FOR ANTICIPATORY BREACH OF CONTRACTS—It was laid down by Lord Campbell that one party to a contract, accepting and acting on the unqualified statement of the other party that he did not intend to perform, might bring an action for a breach, though the time for performance had not arrived. *Hochster* v. *De La Tour* (1852) 2 E. & B. 678; *Avery* v. *Bowden* (1855) 5 E. & B. 714. In England this doctrine of anticipatory breach has not been questioned but the fact that the courts have in nearly every subsequent case invoked some technical objection to avoid its application may be significant. In the United States one year after the enunciation of the rule in England the answer came from Taney, C. J. that "it cannot be maintained either upon principle or authority of the adjudged cases." But after considerable conflict in the Circuit Courts the Supreme Court finally adopted the English rule. *Roehm* v. *Horst* (1900) 178 U. S. 1. Twelve States also have adopted the rule. Three repudiate it. *Daniels* v. *Newton* (1874) 114 Mass. 530. Connecticut in a recent case has joined the majority. *Wells* v. *Hartford Manilla Co.* (Conn. 1903) 55 Atl. 599. Elsewhere the question is still open.

In precedent the doctrine, at the time it was announced, found apparent support in a few cases but was squarely against the weight of authority. *Ford* v. *Tilley* (1827) 6 B. & C. 325; *Philpotts* v. *Evans* (1839) 5 M. & W. 475; *Lovelock* v. *Franklyn* (1846) 8 Q. B.